

DISTRICT OF COLUMBIA
DOH Office of Adjudication and Hearings

DISTRICT OF COLUMBIA
DEPARTMENT OF HEALTH
Petitioner,

v.

FERNANDO E. MIRANDA
Respondent

Case No.: I-00-70116

FINAL ORDER

On May 1, 2001, the Government served a Notice of Infraction (No. 00-70116) upon Respondent Fernando E. Miranda, alleging that he violated 23 DCMR 2606.4, which requires persons who conduct food operations to handle and store their wastes in a manner that will, among other things, make those wastes inaccessible to vermin, and 23 DCMR 3012.1, which requires persons engaged in the operation of restaurants, delicatessens or catering businesses to take all necessary precautions to keep the premises free from rats and vermin. The Notice of Infraction alleged that the violations occurred on April 27, 2001 at 1329 Park Road, N.W., and sought a fine of \$1,000.00 for each offense.

On May 7, 2001, Respondent filed a timely plea of Deny, and I subsequently issued an order setting a hearing for June 20, 2001. All parties appeared for the hearing. Ronnie Herrington, the inspector who issued the Notice of Infraction, appeared on behalf of the Government, and Respondent appeared on his own behalf.

Mr. Herrington testified that the property at 1329 Park Road is a residential building, with no business conducted there, and I so find. Consequently, the Government did not prove that Respondent violated the rules cited in the Notice of Infraction, both of which are inapplicable to premises where no business operations involving food are conducted.

The first rule allegedly violated by Respondent is 23 DCMR 2606.4, which provides:

All wastes shall be handled and stored in a manner which will not create a nuisance, and in a manner which will do the following:

- (a) Minimize the development of odors;
- (b) Be inaccessible to vermin;
- (c) Prevent the contamination of food or food contact surfaces;
- (d) Prevent the soiling of food storage, preparation, or serving areas.

Section 2606.4 is one of a series of regulations applicable to “food operations” within the District of Columbia. *See* 23 DCMR 2400. Those regulations define a “food operation” as “any activity involved in the importation, preparation, processing, transportation, service, storage or sale of food for public or private consumption, except the activity performed by a member of a household in providing, preparing or serving food for a member of the household or for a nonpaying guest of the household.” 23 DCMR 2499. *See also* 23 DCMR 2400.5 (making the regulations inapplicable to food “prepared, processed, or stored in a private home by a member or members of the household for the benefit of the household or the non-paying guest(s) of the household.”) The Government’s evidence established that 1329 Park Road is a residential building with no commercial activity occurring there. Because there is no evidence of a “food

operation” in the residential premises at 1329 Park Road, N.W., there can be no violation of § 2606.4.

The other rule allegedly violated by Respondent is 23 DCMR 3012.1. That rule requires “all persons engaged in the operation of any restaurant, delicatessen, or catering business” to “take all necessary precautions to keep the premises free from rats and vermin.” Because the Government conceded that no “restaurant, delicatessen or catering business” was operating at 1329 Park Road, N.W., it was unable to prove a violation of that section.

Accordingly, because the Government was unable to meet its statutory burden of proof, the Notice of Infraction must be dismissed. D.C. Code § 6-2713(c).

For these reasons, it is, this _____ day of _____, 2001:

ORDERED, that Respondent is not liable for violating 23 DCMR 2604.1 or 23 DCMR 3012.1, and the Notice of Infraction is **DISMISSED**.

FILED **07/22/02**

John P. Dean
Administrative Judge